

THE NEW-YORK CITY-HALL RECORDER.

VOL. I.

For December, 1816.

NO. 12.

AT a COURT of GENERAL SESSIONS of the Peace, holden in and for the City and County of New-York, at the City-Hall of the said City, on *Monday* the 2d of *December*, in the year of our Lord one thousand eight hundred and sixteen—

PRESENT,

The Honourable

JACOB RADCLIFF, *Mayor*.

JONAS MAPES, and } *Aldermen*.
PETER CONREY, }

GRAND JURORS.

DUNCAN P. CAMPBELL, *Foreman*.

GEORGE BEMENT	ROBERT THOMAS,
WILLIAM HOWARD	ROBERT I. RENWICK,
ISAAC BELL,	HENRY BREVOORT, <i>junr</i> .
JACOB HOUSEMAN,	WILLIAM I. STEWART,
CALEB HORTON,	SKEFFINGTON SELBY,
LEWIS SEYMOUR,	GEORGE L. BRUCE,
JOHN T. CEBRA,	STEPHEN CAVE.

JONATHAN HARNED.

MANSLAUGHTER.

CALEB GRISWOLD's CASE.

RODMAN, *Counsel for the Prosecution*.

I. M. ELY & H. SEDGWICK, *Counsel for the Defendant*.

On the traverse of an indictment for manslaughter, stating the offence to have been committed in the Ninth Ward of the city, and within the county of New-York, it appeared that the offence, if any, was committed in Queen's County—held that this court had no jurisdiction.

In such case, where the jury acquit a defendant who resides in another state, and had given bail for his appearance in the Sessions of the City and County of New-York, that court will suspend his discharge until an application, on behalf of the people, can be made by the District Attorney to the Recorder of New-York, or some magistrate, having competent authority, to recognize the Defendant to appear at the next Court of Oyer and Terminer to be held in Queen's County.

The defendant was indicted for manslaughter, committed on the thirty-first day of October last, in the ninth ward of the City, and within the County of New-York, in the East River, by running down a small boat with the sloop Henry, of which the defendant was captain; by means of which, Gideon Thornton, then on board the said boat, was drowned.

It appeared, by the testimony of Charles Low, that in the afternoon of the day laid in the indictment, Thornton and himself were in a small fishing-boat proceeding from this city up the

East-River to Ferry-Point, and the wind was strong aft, nearly at the SSW.

They had proceeded, under full sail, about two miles above Hurl-Gate, and between five and six o'clock, at dusk, when between the North Brother and Riker's Island were about being overtaken by the sloop Henry, which, with other sloops, they had before seen behind them under full sail. Finding she was coming fast upon them, Low, and his companion who was at the helm, cried out to the sloop to bear away; but the sloop not changing her course, the helmsman in the boat, by the direction of Low, first luffed, and finding this would not effect the object, kept her away. At this time the boom of the sloop was on the larboard side, and Low, finding that the boom would inevitably strike the mast of the boat, cried to his companion to let go the main-sheet which he held in his hand, which would have enabled Low to have unshipped the mast, and prevented the boom from sweeping it down, and capsizing the boat. Thornton, most probably, being much agitated, either did not hear or regard the order of Low, who made a sudden effort to unship the mast, but, by reason of the press of sail, failed. The boom struck the mast, careened the boat and half filled her, and the mainsheet to the sloop suddenly catching in the rigging attached to the mast of the boat, she was instantly filled, and sunk, and Thornton and his companion were left to struggle with the waves.

Thornton, although a good swimmer, was much frightened, and soon became exhausted. Both cried for assistance, but received none from the sloop, who passed them apparently regardless. At the time they were in the water, Low saw two men looking over the stern of the sloop, and he did not see them making any effort to save himself and his companion. Low encouraged the other, told him not to be frightened, and attempted to assist him to the shore; although it appeared that Low had on a large pea-coat, and was otherwise much encumbered with clothes. Thornton, having hold of Low, took him under water; when, finding that he would drown both, Low disengaged himself from the grasp, and Thornton soon disappeared. Willet Lacraft, one of the sound pilots, who had piloted a sloop called the Golden Huntress from this city as far as Riker's Island, at this juncture of time had left the sloop and was going on shore alone, in a small boat. He heard the cry of Low and Thornton, and was about proceeding towards the place from whence the noise came, but seeing the Henry near, with her peak down, he thought that she

would render the necessary assistance, and continued his course to the shore; but observing that the sloop continued her course, and that the cries continued, he came as soon as possible, against wind and tide, to the place from whence the cries proceeded. Other boats, from sloops that were anchored near Riker's Island, waiting for a turn of tide to go through Hurl-gate, also came at about the time Lacraft arrived, and Low was saved; but assistance came too late for the other, who continued about ten minutes on the surface before he sunk.

Lacraft, who was sworn as a witness on behalf of the prosecution, stated, as his opinion, that the Henry was in such a situation, at the time the accident took place, that she might have rounded to immediately without danger; and that had she done so, she could have afforded assistance to the sufferers sooner than himself or the boats from the sloops at anchor could have done. This witness also gave the account, above detailed, of the assistance rendered by which Low was saved.

It appeared by the testimony on behalf of the defendant, that Edward Ackerson, (sworn as a witness on behalf of the defendant) one of the Sound pilots, conducted the sloop from this city to within about half a mile of the place where the accident took place. Several sloops, during the passage, among which was the Golden Huntress, had outsailed the Henry. When Ackerson left the Henry it was getting dark, the wind was blowing a smart breeze, and the vessel sailing seven knots an hour. He directed her to be kept a due east course, for the purpose of clearing Frog's Point. As soon as he left her a light was put in the binnacle. There were three men on board, including the defendant; one of whom was at the bow, tending the jib. The boat was hung at the stern by Davy-falls, in the usual manner, by which she might be let down in the water. It was proved, however, by Ackerson, that it is extremely dangerous to let down a boat suddenly when a vessel is under way; and that it is usual for vessels sailing the Sound, so to have the Davy-falls belayed that it would take a considerable time to let down the boat.

Charles Francis and George Adams, sworn as witnesses on behalf of the defendant, concurred in showing that they were on board at the time the accident took place; the first of whom was at the helm, the other at the hatches looking out to the windward, and the captain near the mast coiling a rope. The peak was down for some time before the accident took place, which was in about ten minutes after Ackerson left the sloop. Neither of the prisoners on board saw the boat, or heard any cry from on board until she was close in by the boom, when Francis luffed for the purpose of clearing the boat, which was impossible, and

the accident, as before mentioned, instantly took place.

The defendant, observing the situation of the boat, immediately sprung to the haulyards, and let go the fall, to lower the mainsail; but, by reason of some obstruction in the rigging above, the mainsail could not be lowered. Francis asked the defendant whether some assistance to the men could not be rendered, to which the defendant replied that it was impossible. The defendant and Adams, however, immediately hailed the sloops at anchor, and in a short time observed several boats coming from the sloops towards Low and Thornton. Those on board the sloop calculated that the boats could render the requisite assistance, before it would be possible that assistance could be rendered by themselves, and proceeded.

There was nothing to be found on deck to be thrown overboard, on which the sufferers could float; the deck being nearly covered with heavy articles of different kinds.

The difficulty of rounding to, and letting down the boat of the sloop, for the purpose of assisting the men, circumstanced as the sloop was, with regard to the want of hands, was shown from the testimony of Ackerson, Adams, and Francis.

After the testimony on behalf of the defendant was closed, Sedgwick raised an objection to the prosecution, on the ground that the place where the offence, if any, was committed, was without the City and County of New-York, and therefore could not be tried in this court.

It was ascertained, by a reference to the act dividing the state into counties, that the *locus in quo* was in Queen's County. Rodman admitted the objection to be fatal; and the court, on that ground, advised the jury to acquit the defendant.

He was acquitted, and Rodman thereupon moved the court to recognize the defendant to appear at the next court of Oyer and Terminer, to be holden in Queen's, to answer to this charge.

Ely and Sedgwick contended that the defendant, having been duly acquitted by the jury on this charge, ought not to be held to answer for the same offence in another County; and that no proceeding before the court could legally authorize such detention.

The court declined to interfere in requiring such recognizance, but suggested that the application should be made to the Recorder, or some other officer having competent authority. Until such application could be made by the District Attorney, the court suspended the discharge of the defendant.

Application was made to the Recorder, who took time until the next day to consider; but Rodman did not renew the application, and the defendant was discharged.

In justice to the defendant, we cannot omit

remarking, that, taking all the circumstances of this case into consideration, no blame could be justly imputable to him for the accident which occurred. Thornton lost his life merely through misadventure. In the exercise of lawful employments, from which danger may accrue to others, the law requires an ordinary degree of caution, proportionate, however, to the danger which may be reasonably apprehended in the given case, (1 East's C. L. 262 & 63.) In this case it appeared that there was one engaged in looking out, who did not see the boat until it was too late to avoid her.

After the accident took place, the best course which could have been adopted on board for saving the men, undoubtedly was, to have rounded to the sloop immediately, and have lowered the boat the moment it was practicable, and in the mean time to have cast over some spar or floating matter, to afford relief to the sufferers. Nautical men, having as it were the charge of the lives of others, generally anticipate, or ought to do so, the measures to be adopted in case of accident by losing a man overboard; so that their actions, in such cases, are the result of previous deliberation. But it should be remembered, that many men, inexperienced in affairs of this nature, who have perhaps never thought on the subject, whenever an accident of this nature takes place, are so agitated, that their reason becomes in a measure suspended, and they either act not at all, or absurdly. Many hesitate, and know not what course to adopt.

In general, the measures taken by a man, in a case where he has not had time to deliberate, should not be scrutinized with severity. There is, therefore, no reason to censure or condemn a man, reduced to a situation requiring a sudden effort of the judgment, for acting or not acting precisely in the mode which cool reflection would dictate.

BURGLARY.

CHARLES JONES' and WILLIAM HONEYWELL'S CASE.

RODMAN, *Counsel for the prosecution.*

WILSON & PRICE, *Counsel for the prisoner.*

An indictment for burglary, contained three counts, the first of which alleged the offence to have been committed in the dwelling-house of S, the second in that of J, and the third in that of H. On the traverse of the indictment, it appeared, that S the landlord, living at a different place, hired the building to J and H, by separate leases, and that the offence was committed in a part of the premises occupied by H as a store, also living in a different place. There were separate outer doors to the store and entry; and on the side of the store, there were two doors communicating with the entry, which entry was used in common by J and H, the first of whom lived in a chamber above the store, communicating with the entry, but the inner store-doors were not in use, having been closed. It was held, that breaking and entering the outer store-door in the night, feloniously, was not burglary.

The prisoners, the latter of whom was a black, were indicted for a burglary and grand larceny, committed in the night of the 16th of November last, by entering the dwelling-house of William S. Hick, and stealing watches, jewellery, and other articles, to the amount of \$50, the property of the said Hick. In the first count in the indictment, the prisoners were charged with breaking and entering the dwelling-house of Daniel Sullivan; in the second that of Catharine Jones; and in the third that of William S. Hick.

It was proved on behalf of the prosecution, and admitted by the counsel for the prisoners, that in the night laid in the indictment, the prisoners broke open the store of Hick, at No. 129 Water-street, and stole the articles which were produced, and identified; and before they could get clear with the plunder, were detected and seized by the watchmen. The only question, therefore, was, whether the offence amounted to burglary.

It appeared that Daniel Sullivan was the owner of the building in which this offence was committed; who hired the same to Catharine Jones and William S. Hick separately. In the lower part of the building was the store of Hick, fronting Water-street, having an outer door leading into the street, and two other doors on one of the sides of the store, which communicated with an entry, used in common by Mrs. Jones and Hick; the former of whom occupied the chamber over the store, also communicating with this entry. This entry had an outer-door into the same street, a few feet from the store door. The doors in the side of the store had been formerly used, but were closed, by having goods placed before them, previous to the time the felony was committed. There was also a back-yard, in which both of the tenants had a privilege, and on the back of the store there was a window looking into this yard. The premises were under one and the same roof, and Hick lived at a different place.

On this state of facts, the counsel for the prisoner contended, that the place where this offence was committed was not a dwelling-house, in contemplation of law. There was no communication from the store to the entry, and there was a separate entrance for each of the tenants. The store was wholly unconnected with the other parts of the building. The counsel, in support of their argument, cited 1 Hale's P. C. 287, and read from 2d East's C. L. p. 500. the passage cited ante p. 46. in the note.

Rodman contended that the offence, disclosed in the testimony, amounted to burglary.—Sullivan, Jones, and Hick, had an interest in the premises, and the ownership was therefore properly laid in the three counts in the indictment. The several parts of the building were connected, and all under the same roof. Even had this offence been committed in an

out-house, part of the messuage, the indictment under the testimony would have been sufficiently supported: much more so, when it appeared that the place where the felony was committed, was a part of the building, and under the same roof. The counsel cited 2d East's C. L. p. 491, 2 & 4.

His honour, the Mayor, after the arguments of the counsel, advised the jury to find the prisoner guilty of grand larceny merely. No authority, directly in point, had been cited on behalf of the prosecution; and those authorities cited by the counsel for the prisoner, seemed to support the doctrine for which they contended.

Should the jury follow the advice of the court, and find the prisoners guilty of the lesser offence laid in the indictment, the court, in their discretion, can inflict a punishment adequate to the crime committed; but should the jury find the prisoners guilty of burglary, they must be sentenced to the State Prison for life. The prisoners were found guilty of grand larceny, and sentenced to the state prison, the first named seven, and the other fourteen years.

SUMMARY.

GRAND LARCENY.

Joseph Winick, recently liberated from the state-prison, on the 23d day of November last, at a house in Market-street, picked the pocket of Robert Brooks of his pocket-book, containing \$18.

Jacob Hoogland, an old offender, lately from Bridewell, (See Summary, ante page 56.) with several others with whom he had been hunting, went into a house of entertainment, kept by John Knapp, near Fort Gansevoort, and called for some liquor; and, while Knapp and the others were in the bar-room, Hoogland went into another room adjoining to light a segar, and stole a silver watch, hanging over the fireplace, of the value of \$15, the property of Knapp, who missed it a short time after his guests left the house.

The prisoner went over to Hoboken, and exchanged the watch with William Jones for one of a less value, and Jones gave him \$5 to boot.

Jones and Knapp both appeared as witnesses on Hoogland's trial, whose guilt was clearly established.

Daniel Coles Hopkins, according to his own examination, taken in the police, on the 3d inst. went into Willard's office, in the Bowery, and played cards, was successful, and won \$3, went away and returned again, and seeing nobody in the office, stole a clock of the value of \$75, the property of John Thompson. He carried the clock about three miles out of the city, and hid it in the brush.

Thompson, in company with Abner Curtis, one of the police officers, called on the prisoner, and charged him with the theft, who at first denied, and afterwards owned that he stole the property, and went with the owner to the place where it was hid.

The reason alledged in his examination for the felony was, that the day in which it was committed, his property had been seized and sold for house-rent, and being in liquor and bewildered he stole the clock!—Gambling and drinking lead to beggary and ruin.

His counsel, as usual, set up in defence the respectability of the prisoner's connexions; a defence unknown to the law; in reason preposterous.

William Warren, a black, on the 19th of October last, stole two boxes of spermaceti candles, of the value of \$32, the property of Borden Chase, and carried one box to a *taylor's shop*, and sold the box to Michael Kenny, the taylor, for \$5, alledging that he had been a whaling voyage, and received the candles in payment for his wages. Joseph Fellows, another black, saw the prisoner carry the box to Kenny's shop. Application was made to the police, the candles were found, Kenny indicted and tried during this term, on a charge of receiving stolen goods, and was acquitted.

Jack Conway stole a trunk, containing \$108, in specie, the property of Owen Kelly, in Bancker-street. The prisoner, with another, went into the yard of Kelly, and entered the house through one of the back windows. The felony confessed in the examination.

William Drury stole two watches of the value of \$15 each, from the state-room of a brig lying at Whitehall; one of the watches belonged to William Faunes, and the other to Alexander Howard. He was found making off from the vessel, and the captain pursued him, and in bringing him back the prisoner dropped them, and they were found.

Jacob H. Jacobs, about three months ago, stole a quantity of cloth, of the value of \$150, the property of James B. Starkins, from on board the sloop *Industry*, at Peck-Slip. The prisoner had left a part of the property with Isaac Shearman, in Market-street, which led to his detection.

Thomas Gilman al. Tellman, stole half a keg of tobacco, the property of Daniel Smith, and it was taken from his possession a short distance from Smith's shop.

John Downs, with another boy of the same miserable appearance with himself, stole a gold watch, of the value of \$25, from the watch store of Peter Bells, in Cherry-street, and sold it to one Benjamin Bryerly for \$8. Bryerly was tried this term for receiving the watch as stolen goods, but was acquitted.

(This Summary to be continued.)

AT a COURT of OYER and TERMINER, holden at the City-Hall of the City of New-York, on Thursday, the 19th day of December, in the year of our Lord one thousand eight hundred and sixteen—

BEFORE

The Honourable

WILLIAM W. VAN NESS, one of the Justices of the Supreme Court of Judicature of the State of New-York.

JACOB RADCLIFF, *Mayor of the City of New-York.*

JONAS MAPES, & }
WILLIAM AL BURTIS, } *Aldermen.*

MURDER.

DIANA SELLICK'S CASE.

MAXWELL, *Counsel for the prosecution.*

EMMET & PRICE, *Counsel for the Prisoner.*

On a trial for murder, where a juror, not belonging to the society of Friends, on being called, declines serving, from scruples of conscience, and declares, that, having long before made up his mind on the subject, he had determined never to find a verdict, the consequence of which would be the death of a human being, however clear and positive the testimony might be, and that he still adhered to that determination—It was held, that, although such juror was not exempt, by the statute, from serving as a juror, yet such declaration formed a good ground for challenge by the public prosecutor. Such challenge is to be tried by the two first jurors called and sworn.

A lady, during coverture, owned and had possession of a slave, to whom she promised, that on her decease such slave should be free. On the death of the lady, her husband having survived, the slave assumed his liberty, and the surviving husband never claimed his services, though the slave had often seen the husband, who had frequent opportunities of making such claim. The slave had no manumission paper, but considered himself free. It was held that on a trial for murder against a person free, such a slave was not a competent witness.

On the traverse of an indictment for murder, alledging that the death was occasioned by means of poison administered by the prisoner, and the ground of defence on the trial is insanity, should the jurors entertain a reasonable doubt that the death was the effect of poison, it will be their duty to acquit; but should the jurors doubt whether the prisoner was insane at the time of administering the poison, it will be their duty to convict.

To vend poisonous drugs, indiscriminately, without making diligent inquiry, and ascertaining satisfactorily to what purpose they are to be applied, is highly reprehensible.

Quere: Is not the act of vending such drugs, without such inquiry, indictable at common law?

The prisoner was indicted for wilful murder, committed on Hetty Johnson, on the 4th day of January, 1816. The means by which this murder was committed, as alledged in the indictment, was, by mixing a certain poisonous substance, commonly called white arsenic, with gin, and giving the same to the said Hetty Johnson, with intent her the said Hetty Johnson to kill, murder, and destroy: and that after the said poison was so administered, the said Hetty died by reason of the taking such poison.

The prisoner, a black woman, was brought into court wrapped in a blanket, trembling, and unable to support herself in standing, having been a long time, as we understand, under a course of mercury.

By the order of the Court, she was again arraigned on the indictment, to which she pleaded not guilty.

Price was originally engaged for the prisoner, and, on the suggestion of the Court, he requested that Emmet should be assigned as associate counsel for the prisoner. Emmet was, accordingly, associated with Price in the defence.

James Palmer, on being called as a juror, said, "May it please the Court, I object to serving on this jury. My objection rests on conscientious grounds."

By the Court. Mr. Palmer, do you belong to the society of Friends?

Palmer. No, may it please the Court.

By the Court. (After examining the statute.) Mr. Palmer, this is a question that is to be determined by the law of the land. There is no exception in the statute which embraces your case: you are not exempt by law.

Palmer. May it please the Court, I may be forced on this jury; I may be imprisoned; but I shall never do a thing against the dictates of my own conscience. I have long considered the subject, and, according to my construction and belief of the New-Testament, *I think that no earthly tribunal has a right to take away the life of a human being!* The more I have read the scriptures, the more is this opinion confirmed; and I have long determined, and shall firmly adhere to that determination, that, however clear and positive the testimony might be, on behalf of the prosecution, I never would, and never will agree to a verdict, the consequence of which would be the death of a fellow being.

Maxwell. May it please the court, I think it my duty, as public prosecutor, to interpose a challenge to this juror for cause.

By the Court. This challenge must be tried by the two first jurors, called and sworn. The oath is, "You shall well and truly try the matter of challenge, whether James Palmer stands indifferent between the people of the State of New-York and Diana Sellick, the prisoner at the bar, and a true verdict give according to evidence."

The two first jurors were accordingly sworn as triors, and James Palmer was sworn, and testified in substance before the triors, to the same matters which formed the ground of objection against himself; declaring further, that even in this case, had the prisoner made a full and ample confession of her guilt, he never would agree to find her guilty.

Maxwell contended to the Court, and triors, that on general principles, the juror called could not be considered as indifferent between the

people and the prisoner, and ought, therefore, to be set aside. Since the ancient doctrine of attainder had become obsolete, no person was responsible for the verdict which he might render; and the inevitable consequence of suffering this juror to sit, in this case, would be the acquittal of the prisoner.

The counsel for the prisoner contended, that the ground of objection to this juror was novel, and very extraordinary. In this case the Court and triors would perceive that the juror had set up his own private opinion against the law of the land; and should the objection be held valid by the triors, the consequence might be, that every man called as a juror, in case of life and death, would have it in his power to claim an exemption not warranted by law. They contended further, that an objection founded on individual prejudice, which had not been made the subject of statutory exemption or regulation, ought not to prevail.

The legislature had exempted one society of people only, from serving as jurors in case of life and death; and the triors could not assume the cognizance of extending that exemption to an individual, which was denied him by the provisions of the law.

By the Court to the triors.

Gentlemen, James Palmer has been called as a juror on this occasion, and on being sworn has stated, that in no case, however clear and positive the testimony might be, would he render a verdict, the consequence of which would be the death of a human being. This opinion, he states, is founded on conscientious scruples, arising from his construction of the New Testament. Mr. Palmer has appeared before you, and appears to be a sincere, respectable man; and there is no reason before us to induce the belief, that he has resorted to this as a pretence.

On this state of facts, gentlemen, the question arises for your determination, whether the evidence before you is such as satisfies your minds that Mr. Palmer stands indifferent between the government and the prisoner at the bar? The counsel for the prisoner have argued that this juror is not exempted, *by law*, from serving on this jury, and that an objection, professedly founded on the private opinion of an individual, not recognized by any statutory provision, ought not to be held valid. There is, I must confess, some force in this argument, but I am unable to see how it can effect the sole question which you are to try, to which I have called your attention. Were this an objection on behalf of the juror, merely, then the argument would be conclusive; but on this occasion, the government has interposed a challenge, and the right of challenge to the favour, as between the government and the prisoner, is reciprocal. I think that, although this juror is not exempted by law from serving, yet that, regarding the right of the government, the reason why he should not serve is as strong as

if he, in truth, belonged to the society of Friends. I will put a case for illustration: Suppose a civil cause was to be tried, in which the sole defence was usury; and a juror should be called, who should declare, on oath, that, considering the statute of usury inexpedient and wrong, on principle, he had firmly determined never to render a verdict in favour of the provisions of that statute, however clear and positive the testimony of usury might be. Though *the law* had not exempted such juror from serving, yet ought not a challenge for favour, made by the defendant, who sought, in that trial, to set aside an usurious contract or transaction, be sufficient to prevail?

I therefore think that the challenge on behalf of the prosecution is valid, and ought to prevail.

It is unfortunate, gentleman, that such an opinion as that entertained by Mr. Palmer, on this subject, should exist in the mind of any person in the community. That is not my opinion. I believe that every government has a right to protect the community against the murderer, by inflicting the punishment of death. Nay, I believe it strictly conformable to the law of God. This is not my opinion, merely, but that of a large majority of mankind, and many of the ablest jurists.

The triors retired, and in a few minutes returned with a verdict in favour of the challenge.

Palmer was, therefore, set aside as a juror.

After the jurors were sworn, Maxwell opened the case on behalf of the prosecution, wherein he stated, that he expected to show, by positive testimony, and by the confession of the prisoner, regularly taken in the police, that she committed the murder by the means laid in the indictment.

He called on Hetty Johnson, a black woman, as a witness on behalf of the prosecution. This witness, after being duly cautioned by the court concerning the solemnities of an oath, was sworn, and said: In the beginning of January last, Diana Sellick lived with Mrs. Baily, of Doyer-street; and Diana had put her child with me to board on Christmas before. On Thursday (the 5th of January) the prisoner came to my house with some liquor in a white bowl, which she said was gin, and asked me to drink. I told her that I did not want any, and the prisoner then said she would put some sugar in it, which would make it better. She offered it to me again, and I refused to drink, saying to her, "You know I never drink any such thing." She then said, "If you will not drink it, I will drink it myself, and give it to the children." She put the liquor to her own mouth, and turning some out in a glass, gave some, as I think, and am pretty sure, from the glass to her own child—how much either of them drank, I cannot say, as I was about my work. My child, then about a year old, was

at that time at the door, and I charged the prisoner not to give my child any of the liquor: but she took out two tea-spoonfuls from the bottom and gave to my child. The prisoner then went out to go to Mrs. Baily's, and while she was gone her own child was first taken sick, and fell into an empty kettle; I took it up in my lap, and it vomited very much. My child also was taken sick a short time afterwards; and when the prisoner came back, I told her she had come in a good time, for both the children were drunk. The prisoner told me to go for doctor Fowler. I went to my husband, and told him to go for doctor Walters, and when I got back to the house, I found the prisoner there; I took my child in my lap, and wiped its mouth, and round the mouth I saw something was dry, which the prisoner had given her while I was gone.

By the Court. How do you know the prisoner had given the child any thing while you was absent? You must state nothing but what you know yourself.

Witness. The prisoner must have given the child poison while I was gone; no grown person besides was left there: I looked into the fire, and saw the remains or shadow of a paper which had been burned; I looked on the mantle-piece, and saw some white stuff scattered, which came out of the paper when she mixed it.

By the Court. How long after you returned did you see the white stuff on the mantle-piece?

Witness. About half an hour; but before this, I asked her what she had given the child, and she answered nothing. Doctor Walters came and seeing both the children sick, said they were poisoned.

In the morning I told the prisoner that the poison must have been in the liquor which she gave the children; to which she said that it then must have been in the measure in which the liquor was drawn at Mr. Disbrow's.

My husband then went to Disbrow's, at the corner of Pell and Mott streets, and he returned and told the prisoner that Disbrow's measures were clean; and she then told him that she must have made a mistake in the bowl which she got at Mrs. Baily's, as she had one standing with ratsbane, mixed to kill rats.

My husband then went to Mrs. Baily's, and, as I understood, was directed by her to go to Doctor Walters and make inquiry whether the prisoner had not purchased poison at his store.

On the return of my husband, he told her that doctor Walters had said that she purchased poison at his store.

Whereupon the prisoner confessed that she had bought sixpence worth of ratsbane at doctor Walters for me. She said to me, "I meant it for you—I was possessed with the devil."—She threw her arms round my neck, and begged me to go down with her to the police, and

clear her; to which I answered that I could do no such thing.

By the Court. What was the situation of your child?

Witness. Very sick, and puked almost continually. Its only cry was for water: the roof of the mouth was much eaten by the poison, and it lay in this dreadful condition until Monday morning, when it died.

On the cross-examination of this witness, to the several inquiries made by the counsel for the prisoner, she further said; I was married to Johnson in June or July last. The child that died was between two and three years old. I have had five children; but was never married before I married Johnson. I lived at No. 28 Pell-street when the prisoner first sent her child to board with me. When the prisoner came at the time she brought the bowl of poison, she had her clothes, which she had brought from Mrs. Baily's, and said, "Mrs. Baily and myself have cleared out."

By the Court. How much gin was there in the bowl at the time she brought it to your house?

Witness. I do not know, certain; but I should think there was about a gill: it was a half pint bowl.

By the Court. Are you certain that she gave the liquor to her own child out of the glass?

Witness. I am pretty sure that she did, and then to mine in a tea-spoon. At the first her child was much sicker than mine; and on the day the poison was given, the prisoner told me that she was sick at her stomach, and went out of doors, as she said, and vomited. I never had a quarrel, or any difficulty with the prisoner, and she always appeared to me very fond of her child.

I had been in the habit of taking small children to board, which was the reason that I took hers. She used often to come to my house to see her child.

James Seaman, sworn on behalf of the prosecution.

I cannot say that I remember ever to have seen the prisoner before; but I remember that some time after New-Year, in the middle of the day, a black woman came into an apothecary's store in which I was concerned, and asked a young lad who attended the store, for three cents worth of ratsbane or arsenic. The lad told her, that was a smaller quantity than we were accustomed to sell; and she then asked for sixpence worth, which was put up and delivered to her. No questions were asked to her.

Doctor Daniel D. Walters, sworn as a witness on behalf of the prosecution.

Some time about a year ago, on a Thursday, being unwell, I was crossing Doyer-street, when Johnson requested me to go to his house to see two children who were sick. I went to the house, and found two women, one of whom was called Johnson's wife, and two children,

both of which were retching and vomiting.— From the circumstance that both were sick with this particular complaint at the same time, I suspected that they had been taking something of a poisonous nature. I inquired, and Johnson's wife told me they had only been taking gin sling. Every appearance and symptom indicated that they had taken arsenic, and I thought I could discover in the matter voided from the stomach of Johnson's child, that she had taken arsenic not in a state of solution. I may, however, have imagined this, from the other strong symptoms of poison which I discovered. Arsenic is a white powder, and will operate in twenty, sometimes in ten minutes.— Vomiting and retching are some of the most obvious symptoms. I told them that the children had taken poison, and I prescribed something; but being too unwell to attend, I told them that they had better get some one else to attend, and left them.

Benjamin Johnson, a black, called and sworn as a witness on behalf of the prosecution.

By the counsel for the prisoner. Have you ever been a slave?

Johnson. Yes, but I am now free.

Counsel. How did you become free?

Johnson. Mrs. Alexander purchased me of Mr. Curtis, and I lived with this lady after her marriage with Mr. Jaques. She always told me that after her death I should be free, and that Mr. Jaques had nothing to do with me.— After her death I became free, and left the house. I have often seen Mr. Jaques since, and he spoke very friendly to me, and has never made any claim of me.

By the counsel for the prisoner. Have you any manumission paper?

Johnson. I have not.

Emmet. May it please the Court, we object to the testimony of Johnson: he is the slave of Jaques.

By the court, to the public prosecutor. Mr. Maxwell, you had better go on with other testimony, and let this witness stand aside for the present.

Maxwell then called on James Warner, one of the police magistrates, as a witness on behalf of the prosecution, who, on being sworn, and the examination of the prisoner taken in the police being shown him, said: This examination was taken before me in the police-office, on the 5th day of January last. She was in custody when she came there. The examination was perfectly voluntary on her part, and she appeared rational.

Maxwell then proposed to read the examination.

Emmet submitted to the court, whether the examination could be read before it was shown on behalf of the prosecution, that the killing was occasioned by the means laid in the indictment. In this case it appears that the child languished four days, and then died; but whe-

ther by means of the poison, is not shown. In a prosecution for this offence, before the examination is read, a regular foundation should be laid.

By the court. I think in this case, that a sufficient foundation has been laid to entitle the public prosecutor to read the examination.— The child was well on Thursday; was taken sick, and had every symptom attending taking poison, and died on the Monday following.

The examination was then read in evidence, and contained a full and ample confession of the murder; stating that the prisoner being in liquor, and possessed by the devil, went to a druggist, and got sixpence worth of arsenic, which she mixed with gin in a bowl. The prisoner states further that she knew not what she did. Every circumstance relative to her administering the poison, corresponds precisely with the testimony of Hetty Johnson on that subject, except that the examination states that the prisoner gave the liquor to her own child out of the spoon, instead of the glass.

Sarah Bailly, called and sworn as a witness on behalf of the prosecution.

The prisoner lived with me as a servant in the beginning of January last. I did not like her, and turned her away. She was something intemperate. I saw her about two hours after she had given ratsbane to the child, and she then denied that she had given the child any thing. She told me that she had taken a bowl out of my kitchen in which to get gin.

About three or four weeks before she came to my house I had some ratsbane in my house, which I mixed in meal, and put in the cellar for rats. But I am sure that during the time she was there, there was no ratsbane used in my house for rats. I never discovered any thing, either in the conduct or conversation of the prisoner, while in my house, to induce me to suspect her of being insane.

By the court. Mr. Maxwell, I have considered the matter, and am not inclined, in a case of life and death, to admit the testimony of Benjamin Johnson. Mrs. Alexander, while she was the wife of Jaques, owned, and had possession of this black man, promising him that on her decease he should be free. She died, and the slave then assumed his freedom, and Jaques, since that time, has not claimed the services of the black man. He has no manumission paper. Though, in effect, he may be free, yet, in contemplation of law, during coverture, the personal property of the wife vests in the husband. He has a right to dispose of this property, and exercise the right of ownership over the same. On her decease this right still survives; and, in this case, though he hath not claimed, hath still right to claim the services of Johnson.

A Mr. *Hone*, called and sworn as a witness on behalf of the prosecution.

Witness. Legally, I suppose the prisoner is my

slave. I purchased her in 1807, and told her that in 1819 I would free her. While she continued in my family, though she was an excellent servant at times, and particularly fond of children, yet she was restless and unsteady: she was, at times, flighty, which became a subject of serious conversation in the family. I liberated and discharged her; and when she went away, the understanding was, that she was to work in other families, and pay for her time; but I never calculated that she would pay any thing, and had never any idea of claiming her service. After she had left the family some time she returned, but we refused to receive her.

I have long since relinquished all claim, and am willing to execute a formal manumission.

A paper for this purpose was then drawn up by Price, and executed by Hone.

Dr. Walters, again called and examined by the court.

Witness. Arsenic is sold for one shilling and sixpence an ounce, and one third of that quantity could not be dissolved in a gill of gin. That quantity of gin or water would not dissolve more than one drachm of arsenic, which is difficult to be dissolved in that liquor. One grain of arsenic will prove fatal; and having heard the testimony of Hetty Johnson, I believe that two tea-spoonfuls of the liquor, containing merely that proportion of the quantity of arsenic which could be dissolved in a gill of gin, would produce death.

Hetty Johnson, again called and examined by the court.

Witness. The prisoner gave my child two tea-spoonfuls of that which I thought to be sugar from the bottom.

Emmet. May it please the court, I submit the question, whether, in the absence of all testimony on behalf of the prisoner; when she has not called a single witness, whether the public prosecutor has a right to sum up evidence to the jury. This has been, and I think is now the practice in England.

By the court. Mr. Emmet, a different practice has prevailed in this state, ever since I can remember.

Nehemiah Allen, called and sworn as a witness on behalf of the prisoner.

Witness. The prisoner's child recovered after taking the poison; it used to be brought to its mother at Bridewell, of which I was keeper. She appeared to be very fond of the child.

Here the testimony closed.

The prisoner was ably defended by her counsel; and the prosecution was sustained with equal ability: but as the particularity of the testimony, and the collateral points raised during the trial, have already led us beyond the limits within which we originally calculated to compress the case, we shall omit the arguments of the counsel, and hasten to the charge of the court to the jury.

By the court, delivered by his honor, Mr. Justice Van Ness.

Gentlemen of the jury.

The prisoner at the bar is on trial before you for one of the highest crimes in our law. Should she be found guilty, she must be sentenced to suffer the punishment of death; but whether she will actually be executed or not, is not the business of the present inquiry. The grand inquiry to which every other question in the case is merely subordinate, is, *Did the prisoner commit the murder?*

I am aware gentlemen, of the feelings which pervade the bosoms of men of sensibility, sworn as jurors to decide a case of this nature, according to the evidence before them. The juror, penetrated with those benign sentiments of humanity, cherished in our enlightened age, and which dignify our criminal code, approaches to the discharge of his duty with a trembling solicitude. He feels that the life of a fellow-being awaits the result of his determination; and he therefore proceeds with doubt and hesitation, and fear.

But whatever may be your feelings on this occasion, it is my duty to charge you to summon all your fortitude, and boldly march forward to the discharge of that duty which has devolved upon you. Where murder has been committed, public justice imperiously requires satisfaction at your hands.

The first preliminary fact in the case, to which I shall call your attention, and of which you must be perfectly satisfied before you can find the prisoner guilty, is, that *the child died by means of the poison administered*. This forms a substantial part of the case on behalf of the prosecution, the proof of which should be clear and unequivocal. It has been contended by the counsel for the prisoner, that no apparent motive existed in the mind of the prisoner to commit the act; and that there is no evidence on behalf of the prosecution, that the commission of the act was the result of premeditation.

It is true, gentlemen, you must not only be satisfied that the prisoner committed the act, but that it was done with malice aforethought. On this head, therefore, I shall briefly explain the nature of this malice, which the law requires, as one of the principal ingredients to constitute murder. Malice, as applicable to this crime, is either express or implied in the law: express, when antecedent grudges, or menaces of vengeance, made by a prisoner, have preceded the perpetration of a murder, conclusively proved, and brought home to him: implied, where a homicide is committed by a man with a deadly weapon, and without any assignable or known motive. In such case the implication of malice necessarily flows from the act.*

*With respect to poisoning, that necessarily implies malice, because it is a deliberate act. It was made treason by the 22d H. 8. C. 9. which statute was repealed by Stat. 1. Ed. 6. C. 12. Sect. 10 & 13, which makes it wilful murder. (1 East's C. L. p. 225.)

In this case, it is true, we are unable to discover any apparent motive which operated on the mind of the prisoner, to induce the commission of murder. But should you, nevertheless, be satisfied, from the evidence, that she administered the poison, and that the child died by reason thereof, in the mode stated in the indictment, you will be justified in finding her guilty in the absence of all motive.

The evidence in the case, applicable to this branch of the subject, is, that the child was well on Thursday, when she took the poison, when she had all the symptoms incident to those who take the species of poison administered: she continued languishing in that situation until Monday morning, when she died. The prisoner purchased the arsenic; and you have her confession as to the mode in which it was administered. Doctor Walters, in his testimony, tells you, that the quantity given was sufficient to produce the effect which followed, even had that quantity contained in the spoon, consisted merely of the proportion of the arsenic dissolved.

On this state of facts, the true question is, can you believe that the child died by any other means than those laid in the indictment? In human tribunals, to judge and determine, we must, necessarily, be governed by human testimony. I declare, that on this point, the evidence in this case has produced an entire conviction in my mind; but still, gentlemen, you must decide this question for yourselves.

Should you believe that the death of the child was occasioned by the poison, the next question for your consideration is, whether the killing was perpetrated *wilfully*; or, in other words, whether the act of poisoning this child was the result of insanity. This ground of defence has been assumed by the counsel for the prisoner, and strenuously urged in her behalf. They have urged to the jury, that in the absence of all motive for committing this offence, the jurors might, and ought to attribute the act to insanity, from the evidence before them.

With regard to this ground of defence, gentlemen, I must speak my mind freely, and impart to you my honest conviction.

Insanity is a defence often resorted to, and, in most cases, when every other ground of defence has failed. From its nature, it ought to be received in all cases by jurors with the greatest degree of caution and circumspection.

But in a case where poison has been administered—poison, which is of that insidious nature, that the domicil of the citizen can afford no security against its introduction by servants and domestics; the evidence of insanity should not only be conclusive, but overwhelming. In my view, such a defence, in such a case, ought to be scrutinized by the jury with no ordinary degree of caution. It does not follow, by any legitimate rule of reasoning, that because we are unable to penetrate into the motive which

induced the act, that we are therefore to attribute the act to insanity. In her examination she says she was possessed with the devil, and knew not what she did. Can we reasonably look for any other motive than that laid in the indictment?

The positive testimony in the case, independent of the examination, is that of Hester Johnson. She has appeared before you, and from her own statement concerning herself, it appears that her conduct has been immoral. Standing alone, unsupported by other testimony, I should say that the testimony of such a witness, in a case like the present, would be insufficient to produce a conviction. Still, if upon examination, it shall be found that her relation is consistent within itself, and fortified by the testimony of others, then it is entitled to credit. This witness has not sworn to a single material fact, which is not testified to by the other witnesses, or confessed by the prisoner. There is a striking coincidence between the testimony of this woman, and the examination of the prisoner, concerning the mode in which the poison was administered. The only difference between the testimony of Hester Johnson and the examination is, that the witness states that the poison was given by the prisoner to her own child in the glass, but the examination states it to have been given in a spoon. This difference, in my opinion, is rather an evidence of the correctness of the testimony, than otherwise; because had the coincidence been complete, there might have been room left to suspect that the witness had been guided in her testimony rather by the instruction of others, from whom she had learnt the story, than from her own knowledge of the circumstances. Besides, there is strong reason in the case to induce the belief, that in this point Hester Johnson is correct. For should we suppose, as the complexion of the case, I think, will justly warrant, that the prisoner, on this occasion, resorted to an artifice, by taking the liquor herself, and giving it to her own child, to induce the other woman to partake; the prisoner would naturally give her own child the liquor in that state from which the least danger could be apprehended. There is one circumstance, wherein there is a striking coincidence between the examination and the testimony of this witness: the witness states that on her return, after she had sent her husband for the doctor, she saw in the fire the remains or shadow of a paper which had been burned; and the prisoner states, that when she mixed the poison she threw the paper into the fire-place.

Mrs. Baily's testimony is of little bearing in the case, except, as far as it goes, it repels every idea that the prisoner was insane.

This ground of defence, gentlemen, I must confess, appears to me utterly untenable.

On the whole, gentlemen, if after a patient deliberation, you can bring your minds to a ra-

tional doubt on the question, whether the death of the child was occasioned by the poison; or should you be fully convinced, from the testimony before you, that at the time the prisoner committed the act, she was insane, it will, in either case, be your duty to acquit.

But if, on the other hand, after carefully examining and weighing all the facts and circumstances of the case, you should believe that the prisoner wilfully and wickedly perpetrated this act, and that the death was the effect of the poison administered, you are bound to pronounce the prisoner guilty.

After the jury had returned and pronounced their verdict, his Honour, the judge, in a solemn, pathetic address, which drew tears from the surrounding auditory, proceeded to sentence the prisoner.

He remarked, that from the evidence in the cause, there remained not a doubt of her guilt. On the trial she had been assisted by able counsel, who had faithfully discharged their duty. After the most minute and patient investigation, it appeared, satisfactorily, from all the facts and circumstances in the case, that her conduct, in administering the poison, was the result of a cunning artifice.

His honour, after adverting to the prominent facts in the case, and expatiating on the enormity of the offence of which she had been convicted, observed, that having addressed her as a magistrate, he should speak to her as a man.

He then exhorted her earnestly to prepare for a never ending eternity. Her only remaining hope was in and through the merits and intercession of Jesus Christ, to whom she should apply for pardon; and that during her short stay in this life she would be visited by divines, to counsel and instruct her concerning her eternal welfare.

His Honour then proceeded to pronounce the awful sentence of death: that the prisoner be taken from hence to the prison, and on Friday the 18th day of April next, from thence to the place of execution, where she should be hanged by the neck until dead.

After pronouncing the sentence, his Honour spoke, in pointed terms of reprobation, of the conduct of apothecaries who vend poisonous drugs to any person, without a particular examination into the purposes to which they were to be applied; and his Honour even considered it questionable whether persons, so vending such articles, were not liable to be indicted for a misdemeanor.*

* In many of the principal cities in Europe, no drugs of a deleterious quality can be obtained without a certificate, signed by a regular Physician or surgeon. Whether this is a municipal regulation or not, we have not ascertained. It is highly probable that such a prohibition existed in the Italian states, in the days of Shakespeare..

"And if a man did need a poison now,
Whose sale was present death in Mantua,
Here lives a crafty wretch would sell it him."

Rom. & Ind.

(Summary, continued from page 184.)

Stephen Canfield, the day before the trial, stole a surtout coat of the value of \$25, a pair of pantaloons, of the value of \$10, and other articles, the property of Stephen Peck, from the boarding-house of Peck, to whom he confessed the felony.

The above-named prisoners were each indicted, tried, and found guilty of grand larceny; and Winick was sentenced to the state prison seven years, Warren six, Drury Conway and Jacobs, four; and all the rest, together with Samuel Johnson, convicted during the last term for the same offence, except Hopkins and Hoogland, whose sentences were suspended, were sentenced for three years and a day.

PETIT LARCENY.

John Varrell, Nicholas Romaine, Sally Platto, John Martin, Caty Taxforth, Ann Harri-man, Nonesuch, William Richards, John Jackson, Patrick Hern, and Sylvia Green, were severally convicted of Petit Larceny, and sentenced to the penitentiary.

Court of Sessions.

December Term, 1816.

(For the officers present, see page 181.)

PERJURY.

WILLIAM JARVIS' CASE.

RODMAN, Counsel for the prosecution.

WILSON, PRICE, & SIMONS, Counsel for the Defendant.

The existence of the former cause, on the trial of which the perjury is assigned, must be proved by the record, if insisted on by the counsel for the defendant, and cannot be proved by the minutes of the court kept by the clerk.

In favour of a lad of tender years, under very peculiar circumstances, rigid rules of law may be relaxed.

The defendant, who is the same person referred to in the case of Phebe Jarvis, (Vide ante p. 106) and about fourteen years of age, was indicted for wilful and corrupt perjury, committed on the 14th day of June last, in this court, on the traverse of a certain indictment for an assault and battery, alledged to have been committed by John Jarvis, on one Eliza Gorham. The perjury assigned in the indictment, was, that the defendant, on the trial of that cause, swore, that *he was present at the time the alledged assault took place, and that the said John Jarvis did not commit the assault on the said Eliza.*

After opening the prosecution, Rodman offered Robert Macomb, the clerk of this court as a witness, with his book of minutes, to prove the existence of the former cause, during the trial of which the perjury was alledged to have taken place.

The counsel for the defendant objected to this species of evidence, inasmuch as the fact attempted to be shown, could be proved by the record only.

The court decided that, if insisted on, the record must be made up and produced.

The counsel, however, agreed to dispense with this formality on the production of the original indictment, and the trial proceeded.

It was proved by Eliza Gorham and Hannah Robson, witnesses on behalf of the prosecution that the defendant was not present at the time in which the alleged assault took place; and that the oath of the defendant on the former trial, corresponded in effect with that assigned as perjury in the indictment. Mr. Robson, the husband of the witness last named, on being sworn, corroborated the testimony of these witnesses, in relation to the oath taken by the defendant on the former trial; and a young woman, living in the house in which the alleged assault took place, which was occupied by Robson and Jarvis, and their families, on being sworn as a witness on behalf of the prosecution, testified, that the defendant came home to his dinner at about twelve o'clock of the same day the assault took place, and immediately after dinner went up the Bowery, and did not return until night.

All the witnesses concurred in showing that the alleged assault took place on the 28th of May last, between three and four o'clock in the afternoon. It appeared that there had been for some time past a violent family quarrel between the families of Robson and Jarvis.

After the testimony on behalf of the prosecution was closed, the counsel on behalf of the defendant introduced John Jarvis and Phebe Jarvis, the father and mother of the defendant, as witnesses to prove that the son was present at the time the alleged assault took place, and that no assault was committed.

The court conferred; and at length intimated that the testimony on behalf of the prosecution, in relation to that part of the oath of the defendant concerning the assault, was of a negative nature, and appeared to the court rather loose. The lad was of tender years, and might have acted under some mistake and misapprehension. Should he be found guilty, it would prove ruinous to all his future prospects. Besides, the father and mother were called as witnesses on behalf of the defendant, to support the oath taken by their son on a former trial. From the temper manifested heretofore by these parties, the court apprehended that hard swearing would take place. The court therefore advised the jury to acquit the defendant.

He was acquitted by the jury.

CONSPIRACY.

JOHN TAYLOR'S CASE, indicted with **JOHN S. WARD, HARRY BOGARDUS,** and **JACOB SKINNER.**

RODMAN, *Counsel for the prosecution.*

ROSE, PRICE, & GALE, *Counsel for the prisoner.*

A previous conspiracy to defraud, may be inferred from subsequent acts.

The above-named defendants were indicted for a conspiracy, committed on the 3d of December inst. in defrauding Elijah Secor of 25 yards of carpeting, of the value of 25 dollars.

Taylor alone was brought to trial, the others not having been taken.

It appeared in evidence, that on the day laid in the indictment, Taylor came to the store of Secor, at No. 130 Broadway, and purchased the carpeting above-mentioned; alleging that he was purchasing for other persons, and that if Secor would send the cloth to No. 16 Thomas-street, he would receive the money: Hicks, a black man, was procured to carry the cloth, and the prisoner told him that if he called at that place in a quarter of an hour, his brother-in-law would be there and pay him.

Hicks, after some considerable difficulty in finding the brother-in-law, at length found several persons whom he did not know, near the house of Jane Nichols, a black, and was so imprudent as to deliver the cloth to one of them, without receiving his money.

At the time the cloth was delivered the prisoner was not present, nor did it appear clearly from the testimony either of Hicks or the black woman, that either of the other defendants, except Bogardus, was present at this time.

On the same day, however, at early candle-light, all the defendants came to the store of John Hatfield, at the corner of Church and Anthony streets, and offered the carpeting for sale, at 16 dollars. Hatfield was suspicious that they had stolen the property, and refused to have any thing to do with it. He inquired of them where it was obtained, and they replied that they found it in the middle of Broadway. On his refusing to purchase the piece, which was then entire, they proceeded to divide it, and actually cut it in two pieces; when Hatfield, for the purpose of saving the property, interfered, and prevailed on them to leave it at his store, where it was afterwards found by the owner.

A number of witnesses was called on behalf of Taylor, who proved that he had been engaged in the chair-making business, and had heretofore been an honest, industrious man: but his appearance indicated habitual drunkenness—the parent of many other crimes.

Price contended to the court and jury, that the offence charged in the indictment, consisted in confederating for an unlawful purpose; and that the subsequent conduct of the defendants at the store of Hatfield, was not evidence of a previous concert.

The crime, as disclosed in the testimony, consisted in obtaining the property by false pretences; and the defendant could not be found guilty on the present indictment.

Rodman argued, that the jury were bound to infer, from all the circumstances of the case, the confederacy charged in the indictment. It is obvious that men do not conspire to perform an unlawful act in the presence of witnesses; and we are therefore obliged, in most cases, to recur to circumstances. The counsel, in support of his argument, cited the case of John Storm, reported ante p. 169.

His honour the mayor charged the jury, that for different offences the law had prescribed different remedies. The offence charged in the indictment consisted in the confederacy of two or more persons, for the purpose of performing some illegal act.

The principal question in this case was, whether the defendants did thus conspire together. It is contended by the counsel for the defendants, that no proof of a previous conspiracy, in this case, has been adduced.—This is not necessary; for should the jury, from the facts and circumstances in this case, believe that the defendants, or any two of them, did previously conspire, either to do the particular act laid in the indictment, or to defraud generally, it will be the duty of the jury to find the defendant at the bar guilty.

The defendant was found guilty, and sentenced to imprisonment in the City Penitentiary six months.

ALPHABETICAL TABLE
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*** In the following Table, the Offences, in many cases, after the names, are designated by the Initials of the name of the offence. For example—A. & B. stand for Assault and Battery; R. S. G. for Receiving Stolen Goods; and G. L. and P. L. for Grand and Petit Larceny.*

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